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903 WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

ROBERT KEVIN MCCARTNEY, et al.,
Plaintiff

CIVIL ACTION
SECTION "P"
NO. 05-MC-00039

VERSUS

WILLIAM EARL HILTON, et al.,
Defendants

MAGISTRATE JUDGE JAMES D. KIRK

MEMORANDUM ORDER

McCartney filed a motion for permission to file a civil proceeding and a motion to reinstate a prior civil proceeding. McCartney is a litigant who filed the same claims in several lawsuits, although they had already been litigated in this court. McCartney has been sanction-barred by the Fifth Circuit Court of Appeals from filing any new civil actions without permission from the forum court.

In his current motion, McCartney seeks permission to pursue the same claims which have already been considered and which formed the basis for his sanction-bar, alleging newly-discovered evidence which was provided to him on October 28, 2004. McCartney contends the new evidence "displays perjury by Det. Terral, an illegal arrest of Robert Kevin McCartney, destruction or altering of an arrest warrant for John Mitchum as it pertains to probable cause on plaintiff's arrest, etc." McCartney filed this claim pursuant to both Bivens v. Six Unknown Named Agents of the Federal Bureau of

Narcotics, 403 U.S. 388, 91 S.Ct. 1999 (1971), and 42 U.S.C. § 1983, asking this court to reopen his prior cases (apparently pursuant to Rule 60(b)) and requesting monetary damages due to false arrest and illegal detention.

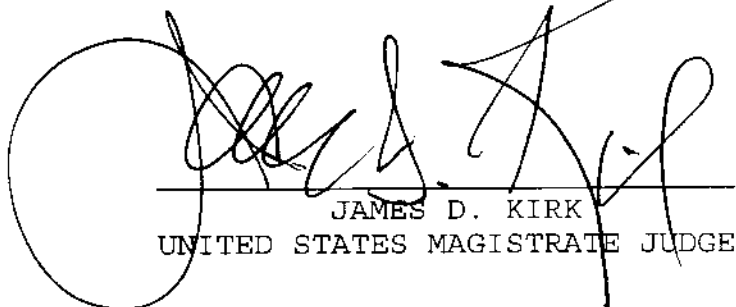
McCartney's request for permission to file yet another complaint, on the same cause of action on which he has already filed numerous complaints, is denied. McCartney has not specified what the new evidence is or explained why it was previously unavailable. Moreover, "new evidence" does not justify reopening cases, pursuant to Rule 60(b), which were closed several years ago. Bailey v. Ryan Stevedoring Co., Inc., 894 F.2d 157, 160 (5th Cir.), cert. den., 498 U.S. 829, 111 S.Ct. 89 (1990).

Accordingly,

IT IS ORDERED that the Report and Recommendation previously issued on this motion is VACATED.

IT IS FURTHER ORDERED that McCartney's motion for permission to file a new complaint is DENIED and McCartney's complaint is DENIED.

THUS DONE AND SIGNED at Alexandria, Louisiana, on this 29 day of December, 2005.



JAMES D. KIRK
UNITED STATES MAGISTRATE JUDGE